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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAIME ACOSTA,

12 Petitioner,

13 vs.
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15 F. GONZALEZ, Warden *et al.*,

16 Respondents.
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Case No. 11cv2618-DMS (BGS)

**ORDER ADOPTING REPORT
AND RECOMMENDATION,
DISMISSING PETITION
WITHOUT PREJUDICE, AND
DENYING CERTIFICATE OF
APPEALABILITY**

18 On June 14, 2011, Petitioner Jaime Acosta, a state prisoner proceeding *pro se*, filed a petition
19 for writ of habeas corpus under 28 U.S.C. Section 2254, seeking relief from a restitution fine imposed
20 in connection with his murder conviction. (*Acosta v. Gonzalez*, 11cv1313-DMS (BGS).) Because
21 Petitioner was not challenging the fact or duration of his confinement and did not meet the in custody
22 requirement of section 2254, the petition was dismissed for lack of jurisdiction. *See Bailey v. Hill*,
23 599 F.3d 976 (9th Cir. 2010). On November 9, 2011, Petitioner filed a petition under 28 U.S.C.
24 Section 2241 seeking relief from the same restitution fine. The petition was referred to United States
25 Magistrate Judge Bernard G. Skomal for a report and recommendation pursuant to 28 U.S.C. Section
26 636(b)(1)(B) and Civil Local Rule 72.1(d). On August 23, 2012, the Magistrate Judge issued a Report
27 and Recommendation recommending to dismiss the pending petition as duplicative of the previously-
28 filed petition.

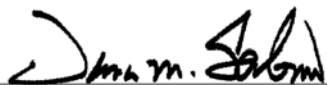
1 In reviewing a magistrate judge's report and recommendation, the district court "shall make
2 a *de novo* determination of those portions of the report . . . to which objection is made," and "may
3 accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate
4 judge." 28 U.S.C. § 636(b)(1). Petitioner objects to the Report and Recommendation.

5 The newly filed petition is dismissed because it merely repeats previously litigated and decided
6 claims. *See Cato v. United States*, 70 F.3d 1104, 1105 n.2 (9th Cir. 1995). Alternatively, it is
7 dismissed for the reasons stated in the order filed February 22, 2012 dismissing the previously filed
8 petition.

9 Accordingly, Petitioner's objections are **OVERRULED** and the Report and Recommendation
10 is **ADOPTED**. The petition is **DISMISSED WITHOUT PREJUDICE**. Certificate of appealability
11 is **DENIED**.

12 **IT IS SO ORDERED.**

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14 DATED: November 27, 2012

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17 HON. DANA M. SABRAW
18 United States District Judge
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